

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 6, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP584-CR

Cir. Ct. No. 2013CF2324

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

IN RE THE FINDING OF CONTEMPT IN STATE V. CLE A. GRAY, JR.:

CLE A. GRAY, JR.,

APPELLANT,

V.

ROBERT HUMPHREYS, WARDEN, THOMPSON CORRECTIONAL CENTER,

RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
STEPHEN E. EHLKE, Judge. *Affirmed.*

¶1 KLOPPENBURG, P.J.¹ Cle Gray, Jr., appeals pro se the circuit court's order denying Gray's motion for contempt. Gray moved the court of his

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(h) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

criminal conviction to hold Robert Humphreys, the warden of the institution at which Gray was incarcerated at the time Gray filed the motion, in contempt of the amended judgment of conviction because the institution was deducting what Gray believed were excessive amounts from his prison funds. Specifically, Gray argued that the institution improperly deducted amounts for restitution from both his prison wages and “gift monies” that he received while in prison, in excess of a 25% cap that he asserted the judgment placed on deductions from his prison wages only. I affirm, because the amended judgment of conviction on its face defeats Gray’s argument.²

BACKGROUND

¶2 After Gray was convicted of a felony, the circuit court entered a judgment of conviction that imposed certain costs and surcharges totaling \$268 and restitution to be determined. Under the heading “Comments,” the judgment provided as to the condition of restitution, “DA has 90 days to prepare/submit order”; as to the condition of costs, the judgment provided, “\$268.00 to be collected by the Dept of Corrections. Court financial obligations shall be paid at the rate of 25% of the prison wages and work release funds. Restitution shall be paid pursuant to separate court order.” The court subsequently issued an order for restitution, requiring that Gray pay \$2,757.68 in restitution for his victim’s medical bills, and providing that the “Department of Corrections shall collect

² The State argues that the circuit court should be affirmed because a contempt action against Humphreys is procedurally improper in several respects. Because I conclude that the amended judgment on its face defeats Gray’s arguments, I do not reach the State’s alternative grounds to affirm. See *Barrows v. American Family Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013) (“An appellate court need not address every issue raised by the parties when one issue is dispositive.”).

restitution from up to 25% of prison funds if defendant is incarcerated.” An amended judgment of conviction was entered after Gray’s sentence was reduced at a sentence modification hearing. The amended judgment of conviction specified the restitution amount of \$2,757.68, and the language under the “Comments” heading as to the conditions of restitution and costs was identical to the language in the original judgment of conviction quoted above.

¶3 Gray, without assistance of counsel, filed a motion for contempt of court in the court of his criminal conviction, seeking remedial sanctions against Humphreys under WIS. STAT. § 785.03. Gray argued in his motion that while he was at the institution where Humphreys was warden, deductions were being made from his prison wages and gifted funds in violation of the amended judgment of conviction, which, according to Gray, capped deductions for costs and restitution at 25% of his inmate wages only. The circuit court denied his motion, as follows:

The Amended Judgment of Conviction ordered court financial obligations paid at 25% of your prison wages and work release funds. Separate from the judgment of conviction, your restitution order commanded the DOC to collect restitution at 25% of prison funds. Neither document ordered the DOC to cap deduction at 25%. DOC DAI Policy #309.45.02 explains that deductions are taken on a declining balance. That is why the DOC has been taking in excess of 25% of your wages or receipts. Based on my review of DOC’s action in your case I believe the DOC is acting with its rights.

If you disagree, your remedy would be to file an appeal within the prison administrative review procedures.

¶4 Gray appeals.

DISCUSSION

¶5 “In reviewing a circuit court’s use of its contempt power, [appellate courts] determine whether the circuit court erroneously exercised its discretion. A circuit court erroneously exercises its discretion if it makes an error of law. This court decides any questions of law that may arise during its review of a circuit court’s exercise of discretion independently of the circuit court” *Topolski v. Topolski*, 2011 WI 59, ¶27, 335 Wis.2d 327, 802 N.W.2d 482 (footnotes omitted).

¶6 Gray argues that the circuit court erroneously denied his motion for contempt alleging excessive deductions from his prison funds, because under the amended judgment of conviction he has the “right to retain 75% of prison wages and 100% of gift monies received.” To the extent that Gray argues that the sentencing court lacked authority to order deductions from the funds he received as gifts while incarcerated, his argument fails because such deductions are specifically authorized by statute. Under WIS. STAT. § 973.20(11)(c), “If a defendant who is in a state prison or who is sentenced to a state prison is ordered to pay restitution, the court order shall require the defendant to authorize the department to collect, from the defendant’s wages *and from other moneys held in the defendant’s prisoner’s account*, an amount or a percentage” for restitution. (Emphasis added.)

¶7 To the extent that Gray argues that the amended judgment of conviction does not authorize deductions from the funds he received as gifts, or deductions in excess of a 25% cap on all prison funds, the amended judgment of conviction on its face defeats his argument. As stated, the amended judgment of conviction provides that the costs totaling \$268 will be paid by deductions from

his prison wages at the rate of 25%, and that restitution in the amount of \$2,757.68 “shall be paid pursuant to separate court order.” The separate restitution order provides that the restitution amount will be paid by deductions from his “prison funds” up to the rate of 25%. Gray does not dispute that the term “prison funds” includes deposits in his prison account of money he received as gifts. Accordingly, the amended judgment of conviction and the separate restitution order that the judgment incorporates, taken together, provide that 25% of Gray’s prison wages will be taken to satisfy the \$268 in costs, and that up to 25% of all of Gray’s prison funds, including prison wages and “gift monies,” will be taken separately to satisfy the \$2,757.68 in restitution.

¶8 In his initial appellant’s brief, Gray does not directly address the language in the amended judgment of conviction. Rather, Gray argues that the circuit court erroneously denied his contempt motion without an evidentiary hearing, citing case law that sets the standard for when a defendant is entitled to a hearing on a motion for postconviction relief under WIS. STAT. §§ 809.30 and 974.06. *See State v. Bentley*, 201 Wis. 2d 303, 548 N.W.2d 50 (1996) and *State v. Allen*, 2004 WI 106, 274 Wis. 2d 568, 682 N.W.2d 433. However, Gray does not explain how that case law applies to his motion for contempt under WIS. STAT. § 785.03. Accordingly, I do not consider this argument. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (“[This court] may decline to review issues inadequately briefed.”)

¶9 In his initial appellant’s brief, Gray also suggests that the circuit court violated the code of judicial conduct based on the time the court took to issue the decision denying his contempt motion. However, Gray neglects to mention that in that time, Gray corresponded with the circuit court’s prisoner litigation staff attorney and the chief judge, who indicated that Gray’s concerns

were more properly addressed through certiorari. Gray's suggestion is without basis.

¶10 Gray makes two additional arguments for the first time in his reply brief. This court generally does not address arguments raised for the first time in a reply brief. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998). However, for the sake of completeness, I address and reject Gray's additional arguments as follows.

¶11 Gray's first additional argument is that deductions for all payments ordered in the amended judgment of conviction must be limited to 25% of his prison wages, because the amended judgment of conviction is the "single order" that applies and it does not contain the language in the restitution order providing for deductions from all prison funds for restitution. Gray provides three bases for his "single order" argument: WIS. STAT. § 973.20(12)(a), an exchange during his sentence modification hearing, and our decision in *State v. Baker*, 2001 WI App 100, 243 Wis. 2d 77, 626 N.W.2d 862. None of the three supports his argument.

¶12 WISCONSIN STAT. § 973.20(12)(a) states, "If the court orders restitution in addition to the payment of fines, costs, fees, and surcharges ... it shall set the amount of fines, costs, fees, and surcharges in conjunction with the amount of restitution and issue a single order, signed by the judge, covering all of the payments" Gray appears to argue that there cannot be a single order where, as here, there are two pieces of paper. However, consistent with the statute, the amended judgment of conviction does "cover[] all of the payments" ordered, and does set the amount of fines, costs, fees, surcharges, and restitution. That the amended judgment of conviction provides that a separate order shall specify how

the amount of restitution set in the amended judgment of conviction will be paid, is not contrary to the statute.

¶13 The exchange during the sentence modification hearing is as follows:

THE DEFENDANT: ... Your Honor, I have one question. Now, there's [going to] be an amended judgment of conviction coming out on this; right?

THE COURT: Yes.

THE DEFENDANT: Is that [going to] also include that the restitution is part of the court obligations on the JOC? That's all I'm – just 'cause I know on the original JOC ... the restitution wasn't there yet, and it was forthcoming. So I just wanted to make sure that on this amended Judgment of Conviction that it's [going to] show that the restitution is part of the court-ordered obligation.

THE COURT: Yeah. It should. Yep.

THE DEFENDANT: Okay.

Consistent with this exchange, the amended judgment of conviction does include the amount of restitution as “part of the court-ordered obligation.”

¶14 In *Baker*, the defendant argued that the circuit court “lacked authority to order that restitution be withheld from his prison wages.” 243 Wis. 2d 77, ¶¶1, 14. We held that the circuit court did have that authority. *Id.*, ¶¶1, 17, 19. We did not address prison funds other than wages. Therefore, that decision provides no support for Gray's argument about non-wages prison funds.

¶15 In sum, the restitution order that is incorporated in the amended judgment of conviction simply sets out the basis for the restitution amount set in the amended judgment of conviction, as well as the method for collecting that amount. Nothing in the statute, the hearing exchange, or *Baker* prohibits the

restitution order from being followed or enforced as part of the amended judgment of conviction.

¶16 Gray's second additional argument is that all deductions must be capped at 25% of his prison wages only, based on WIS. STAT. § 973.05(4)(b) and Dane County Circuit Court Rule 223. As with his first additional argument, neither basis withstands scrutiny.

¶17 WISCONSIN STAT. § 973.05(4)(b) applies where a defendant fails to pay a "fine, surcharge, costs, or fees" within a certain period, and authorizes a circuit court to assign "not more than 25 percent of the defendant's commissions, earnings, salaries, wages, pension benefits, ... and other money due or to be due in the future to the clerk of circuit court for payment of the unpaid fine, surcharge, costs, or fees." This provision on its face does not apply to restitution. The statute itself, WIS. STAT. § 973.05, is titled "Fines"; § 973.05(1) begins, "When a defendant is sentenced to pay a fine ..."; and § 973.05(1m) makes a clear distinction between fines and restitution ("If the court orders payment of restitution and a fine ..., the court may authorize a payment period in excess of the limit imposed under sub. (1).").

¶18 As for the Dane County rule, Gray provides no authority for the proposition that a failure on the part of a circuit court to follow its own local rules, in the absence of a violation of a statute, case law, or some other external authority, entitles Gray to a remedy. Thus, I reject Gray's local rule argument as unsupported by legal authority. Moreover, Gray fails to show any violation of a local rule. The local rule that Gray cites, Dane County Circuit Court Rule 223, states: "Unless otherwise ordered, the judgment of conviction shall provide that when a defendant is sentenced to prison all court financial obligations shall be

paid at the rate of 25% of the prison wages and work release funds Restitution shall be paid pursuant to separate court order.” Gray does not explain how the amended judgment of conviction does not comply with this provision.

CONCLUSION

¶19 For the reasons stated, I conclude that the circuit court properly denied Gray’s motion for contempt concerning the deductions from his prison funds for costs and restitution.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

